IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15368 of 2004

With

CIVIL APPLICATION No. 3580 of 2005

With

SPECIAL CIVIL APPLICATION No. 14839 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL JIGISHA CHANDUBHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SK PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE NOT RECD BACK for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/12/2005

ORAL JUDGMENT

1.With consent of the learned Counsel for both the sides, the matters are finally heard today.

2. It appears that the petitioners applied for the post of Vidhya Sahayak pursuant to the advertisement between 10.07.2004 to 14.07.2004. It appears that when the advertisement was given, the policy prevailing was as per the Government Circular dated 01.10.2001, whereby the marks of three subjects viz. Samuh Jivan, Karya Sikshan & Varshikshan Karya(100 marks each), total 300 marks were to be excluded for the purpose of preparing the merit list at the time of recruitment for the post of Vidhya Sahayak.

3. However, it appears that after the advertisement was issued and the applications were invited, the State Government issued another resolution dated 03.09.2004, whereby the policy of excluding 300 marks was cancelled and all marks of PTC were to be included.

4. The petitioners apprehended that in view of the new policy vide Govt. Resolution dated 03.09.2004, they may not be considered as per the old policy and therefore they have approached to this Court by preferring the present petitions with the prayer inter alia to quash and set aside the Government Resolution dated 03.09.2004 and to prepare the merit list as per the Govt. Resolution dated 01.10.2004 for the post of Vidhya Sahayak.

It appears that this Court while considering the matter for admission on 05.11.2004, passed the following order:

> *"Mr. Maulin Rawal with Mr. P.S. Patel, the learned advocates for the petitioners state under the instructions of petitioner No. 1 that interview for the posts of Vidhya-Sahayaks have not*

commenced in the four districts covered by this petition viz. Gandhinagar, Sabarkantha, Banaskantha and Kheda. Mr. Rawal further states that on the basis of the criteria prescribed by the Government Resolution dated 01.10.2001[Annexure-B]and the Director's Circular dated 09.07.2004[Annexure-C] the respective District Primary Education Officers had already prepared merit lists after excluding the internal marks out of 300 marks in four subjects. However, thereafter the impugned resolution dated 03.09.2004 has been issued which was not made known to the candidates at large. The petitioners recently came to know about the said Resolution when the petitioners did not receive the interview call letters and the petitioners therefore made enquiries.

2.Notice returnable on 9th November, 2004.

In the meantime, there is no ad-interim stay against the selection process going on and there is no ad-interim stay against the interviews being held. However, the respective District Primary Education Officers shall keep available with them both the lists i.e. the list prepared on the basis of the Government Resolution dated 01.10.2001 and the Director's Circular dated 9.7.04 on the one hand and the list prepared on the basis of the Government Resolution dated 3rd September, 2004 on the other hand. The candidates whose names figure in both these lists, shall be given appointments without any rider, but the candidates whose names figure in the list on the basis of the Government Resolution dated 3.9.2004, but do not figure in

the list on the basis of the Government Resolution dated 1.10.2001 read with Director's circular dated 9.7.2004, may be given appointment only on adhoc and provisional basis and subject to any other and further orders which may be passed in this petition. The appointment orders that may be issued shall clearly and specifically state so."

5.It appears that thereafter, Civil Application No. 579 of 2005 in Special Civil Application No. 14839 of 2004 was preferred by the petitioner No. 4 for directing the respondents to issue the appointment order for the post in question on the basis that as per the old criteria of merit, the applicant is having more merit in comparison to the merit list as per the impugned Resolution. This Court on 15.03.2005, after hearing both the sides, passed the following order:

"Rule. Service of notice of Rule is waived by Mr. P.S. Patel, learned Advocate for the applicant petitioner; Mr. P.D. Bhate, learned Assistant Government Pleader for respondent Nos. 1 and 2; and Mr. M.J. Patel, learned Advocate for respondent No. 3, whereas, Mr. P.S. Patel, learned Advocate for the applicant petitioner is also present.

It is jointly and rightly submitted that in view of the earlier commitment and admission by respondent No. 2=Director, Primary Education, Gujarat State, the case of the applicant is to be governed by the old Circular and, therefore, the applicant-original petitioner No. 4, Mr.

Patel Yogeshbhai Sureshbhai, can be directly appointed for the post of Vidhya Sahayak.

This Court finds much force not only in the application-on-hand but also in the consensual statement and more so, when the applicant's name had already been included in the select list, which was prepared as per the old policy, which governs him.

In view of the above observations, respondent No. 3 is directed to issue the appointment order to the said applicant for the post of Vidhya Sahayak within a period of four weeks from today, failing which further orders shall follow and the Court will be constrained to take it seriously, if not complied with. This application, therefore, shall stand allowed without any order as to costs. Rule made absolute. Direct Service permitted."

6. It has been stated that thereafter, the aforesaid order was carried before the Letters Patent Bench in Letters Patent Appeal No. 1411 of 2005 by the District Primary Education Officer. However, as per the order dated 27.10.2005 passed by the Division Bench of this Court, since the order before the learned Single Judge came to be passed upon the consent of both the sides, the Division Bench found no case for interference. Thereafter, it has been stated by the learned counsel for the petitioner that he has been given appointment. Under the above circumstances, Mr. Patel, learned counsel appearing for the petitioners states that the petitioner No. 1 has got appointment as Vidhya Sahayak in the school under the control of Kheda District

Panchayat.

7. So far as petitioner No. 3 is concerned, Mr. M.J. Patel, learned counsel appearing for the respondent No. 4 submitted that the petitioner No. 3 is not even as per the merit list in accordance with the old policy, included in the select list.

8. Mr. P.S. Patel, learned counsel appearing for the petitioners submitted that so far as the petitioner No. 1 is concerned, he has applied for the post of Vidhya Sahayak in the Gandhinagar District Panchayat and no affidavit is filed by the District Primary Education Officer, Gandhinagar in the present case.

9. Under the above circumstances, as such the petition may not survive qua petitioner No. 4 and the question is not required to be examined at the instance of petitioner No. 3 since even otherwise also, as per the old policy of preparing the merit list, he is not included in the list. So far as the petitioner No. 2 is concerned, the question may be required to be examined since as per this petitioner, he has applied with the school under the Control of respondent No. 3.

10. The petitioner of Special Civil Application No. 15368 of 2004 has preferred the petition for the very purpose. However, the only aspects which deserve to be recorded is that the petitioner has applied for the post of Vidhya Sahayak under the Control of respondent No. 3, District Primary Education Board, Ganghinagar. As in Special Civil Application No. 14389 of 2004, interim order came to be passed for the petitioner No. 4 therein, on the same line, the petitioner of Special Civil Application No. 15368 of 2004 has preferred the Civil Application No. 3580 of 2005 for giving

appropriate directions to the respondent No. 3 to issue the appointment order since as per the applicant, his name is included in the select list as per the old policy.

11. The respondent No. 3 has not filed any affidavit in reply neither justifying the Circular of the Government dated 03.09.2004 nor has filed any affidavit pointing out the situation, which may emerge on the merit list either on the basis of the new policy or on the basis of old policy. However, Mr. Munsha with Mr. Barot learned counsel appearing for the respondent No. 3 submitted that as per the new policy, the petitioners of Special Civil Application No. 15368 of 2004 will get 79.30% whereas the appointment given to the last candidate is of 80.01%.

12. As such, the law is settled on the aspects of criteria to be taken into consideration on the date of advertisement and the change of the policy after the date of advertisement. The reference may be made to one of the decision of the Apex Court in the case of **P.Mahendran & Ors. Vs. State of Karnataka & Ors. reported in AIR 1990 SC 405**, whereby the view taken is that if there is change in the eligibility criteria, such change is not having any retrospective effect and the selection of the candidate already made is not affected.

Reference may also be made to the another decision of the Apex Court in the case of S**tate of Uttranchal & Ors. Vs. Sidharth Srivastava & Ors. reported in 2003(9) SCC 336**, whereby, the view taken is that the rules in force at the time of initiation of the selection process are required to be applied.

I am of the view that the same principles can be made available in the present case also.

I am of the view that the matter if considered on the basis of the aforesaid settled legal position, the Govt. Resolution dated 03.09.2004 is admittedly after the advertisement published in the newspaper, which is between 10.07.2004 to 14.07.2004, i.e. after the initiation of the recruitment process. The criteria for selection is altered. Even in the Resolution, there is no express stipulation made for preparation of merit list in connection with the recruitment process, which is already undertaken. In any case, the new policy introduced can have the prospective effect and it cannot apply retrospectively. When the Resolution and the policy of the Government is to operate with prospective effect and is not to apply retrospectively and when the petitioners referred to hereinabove, whose case is required to be considered have applied prior to Policy of the Government in response to the recruitment process already undertaken, such new policy would not operate to the prejudice of the petitioner for getting their name included as per the merit order in the selection. Therefore, it is not necessary for this Court to consider the challenge to the resolution dated 03.09.2004 on the other aspects nor it is required for this Court to consider the legality and validity of the resolution dated 03.09.2004 on the basis that it is applied prospectively.

13. The only aspect, which deserves to be recorded is that the Resolution dated 03.09.2004 is to apply prospectively qua the recruitment process initiated thereafter and not prior thereto.

14. In view of the above, the District Primary Education Officer, Gandhinagar is directed to consider the case of the petitioner No. 2 of Special Civil Application No. 14839 of 2004 and the petitioner of Special Civil Application No. 15368 of 2004 for preparing the merit list on the basis of the policy of the Government prevailing prior to the resolution dated 03.09.2004 and if on that basis, the concerned petitioner is entitled to be included in the merit list for the purpose of selection to the extent of post advertised, the necessary consequential appointment order shall also be issued to them.

    The aforesaid exercise shall be completed as early as possible, preferably within a period of one month from the receipt of the order of this Court, and in any case, on or before 31.01.2006. Since the petitioner No. 4 of Special Civil Application No. 14383 of 2004 has stood on merit even as per both the policy as referred to hereinabove, and as the appointment order is already issued to him, no further order is required to be passed qua petitioner No. 4 of Special Civil Application No. 14839 of 2004.

15. In case, if any of the petitioner is not included in the merit list even as per the policy prevailing prior to 03.09.2004, then appropriate communication shall be made to the petitioner by the respondent No. 3, i.e. District Primary Education Officer for such purpose, stating the name of the petitioner and the merit of the last candidate appointed in the post in question.

16. Both the petitions are partly allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

In view of the order passed in the main Special Civil Application, no order is required to be passed in Civil Application No. 3580 of 2005 and hence the same shall stand disposed of accordingly.

Direct Service permitted.

(JAYANT PATEL, J.)

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